



## Fast Track Proposed Regulation Agency Background Document

<b>Agency name</b>	Department (Board) of Juvenile Justice
<b>Virginia Administrative Code (VAC) citation</b>	6VAC35-140
<b>Regulation title</b>	The Standards for Juvenile Residential Facilities
<b>Action title</b>	Creating a new section setting the staffing ratio for nonsecure juvenile residential facilities regulated by the Board of Juvenile Justice.
<b>Date this document prepared</b>	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.*

This action will create a new section (6VAC35-140-46) in the Board of Juvenile Justice's Standards for Juvenile Residential Facilities (6VAC35-140 *et seq.*). This new subsection will set the staffing pattern for nonsecure facilities regulated by the Board. The staffing ratio would be set at one staff for 10 residents during scheduled awake hours (except independent living programs where it is set at one to 15) and one staff for every 16 residents during scheduled sleep hours. Additionally, when the residents are sleeping, at least one staff member must be in each building and on each floor where residents sleep (except independent living programs).

The staffing ratio for nonsecure residential facilities regulated by the Board of Juvenile Justice used to be governed by the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-10 *et seq.*). The 2007 amendments to this Chapter removed any staffing ratio requirement and mandated the Board of Juvenile Justice to set the ratio. Under the current regulatory scheme, there is no established staffing ratio for nonsecure facilities regulated by the Board. Thus, adopting the proposed section will close that gap. Also, the proposed section adopts the prior regulatory requirements (which was required of these facilities before the December 2007 amendments to the Standards for

Interdepartmental Regulation of Children’s Residential Facilities), will make current practice a regulatory requirement, and will result in continued uniform application throughout the Commonwealth.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.*

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On April 9, 2008, the State Board of Juvenile Justice authorized the Department of Juvenile Justice to submit, for the fast-tracked regulatory process, 6VAC35-140-46, a proposed new section of the Standards for Juvenile Residential Facilities (6VAC35-140 *et seq.*). The proposed section establishes the required staffing ratio for the nonsecure residential facilities regulated by the Board.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.*

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The Board of Juvenile Justice is entrusted with general authority to promulgate regulations by §66-10 of the Code of Virginia, which states the Board may “promulgate such regulations as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by the Director or the Department.” Additional statutory provisions address the Board’s responsibility to promulgate regulations governing residential facilities. These are §§16.1-309.9, governing facilities receiving funding through the Virginia Juvenile Community Crime Control Act (Chapter 11, Article 12.1 of Title 16.1 of the Code of Virginia); 16.1-322.5, governing local or regional detention homes; and 66-24, governing community group homes and other residential facilities.

Juvenile residential facilities regulated by the Board of Juvenile Justice currently must meet the requirements of the Standards for Interdepartmental Regulation of Children’s Residential Facilities (22VAC42-11-10 *et seq.*) and the Standards for Juvenile Residential Facilities (6VAC35-140 *et seq.*). Subsection 830 of the Standards for Interdepartmental Regulation of Children’s Residential Facilities (22VAC42-11 *et seq.*) regulates the staff supervision of residents in all children’s residential facilities. This provision specifies that “The Board of Juvenile Justice shall determine the supervision ratios for facilities regulated by the Department of Juvenile Justice.” Under the current regulatory scheme, no regulations or policies adopted by the Board of Juvenile Justice set the required staffing ratio for nonsecure facilities regulated by this Board.

### Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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Juvenile residential facilities regulated by the Board of Juvenile Justice currently must meet the requirements of the Standards for Interdepartmental Regulation of Children’s Residential Facilities (22VAC42-11-10 *et seq.*) and the Standards for Juvenile Residential Facilities (6VAC35-140 *et seq.*). Subsection 830 of the Standards for Interdepartmental Regulation of Children’s Residential Facilities (22VAC42-11 *et seq.*) regulates the staff supervision of residents in all children’s residential facilities. This provision specifies that “The Board of Juvenile Justice shall determine the supervision ratios for facilities regulated by the Department of Juvenile Justice.” No regulations or policies adopted by the Board of Juvenile Justice set the required staffing ratio for the nonsecure facilities it regulates.

Prior to December 27, 2007, when the Standards for Interdepartmental Regulation of Children’s Residential Facilities were amended, all nonsecure children’s residential facilities were subject to the same staffing ratio, which required each facility to have one staff person supervising every 10 residents during scheduled awake hours. As amended, the Standards for Interdepartmental Regulation of Children’s Residential Facilities (22VAC42-11-10 *et seq.*), 6VAC42-11-830, provides that facilities regulated by the Departments of Education, Social Services, and Mental Health, Mental Retardation, and Substance Abuse Services must maintain a staffing ratio of one staff person for each eight residents. Section 830 specifically excludes facilities regulated by the Board of Juvenile Justice and provides that the Board of Juvenile Justice shall determine the applicable supervision ratios. This exclusion applies to both secure and nonsecure facilities regulated by the Board.

6VAC35-140-545 sets the staffing pattern for secure facilities regulated by the Board of Juvenile Justice. No regulations or policies adopted by the Board of Juvenile Justice set the required staffing ratio for the nonsecure facilities it regulates. This regulation is essential to protect the health, safety, or welfare of both juveniles who reside in juvenile residential facilities and the staff who work there. Absent this regulation, an operator of a nonsecure residential facility regulated by the Board of Juvenile Justice may elect to set a higher staffing ratio that could potentially adversely affect the care of the residents and result in the residents’ needs being unmet. This proposed regulatory action would close that gap.

**Rationale for using fast track process**

*Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?*

*Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

This regulation is being promulgated through the fast-track process because it is expected to be noncontroversial as the proposed section: (1) adopts the prior regulatory requirements (which were required of these facilities before the December 2007 amendments to the Standards for Interdepartmental Regulation of Children’s Residential Facilities), (2) makes current practice a regulatory requirement (as the affected facilities have continued to operate under the prior regulatory requirement), (3) corrects a gap in the current regulatory scheme; and (4) results in continued uniform staffing patterns in these facilities throughout the Commonwealth.

Under the current regulatory scheme, there is a gap in which no staffing ratio has been set for nonsecure residential facilities regulated by the Board of Juvenile Justice. The proposed section would adopt the

same language governing the staffing pattern for secure residential facilities regulated by the Board of Juvenile Justice and apply it to the nonsecure juvenile residential facilities regulated by the Board.

This staffing ratio is also consistent with the ratio required by the Standards for Interdepartmental Regulation of Children’s Residential Facilities (22VAC42-10-10 *et seq.*) prior to its amendment in December 2007. The proposed staffing ratio is different from the general rule currently governing residential programs regulated by the Departments of Education, Social Services, and Mental Health, Mental Retardation, and Substance Abuse Services. However, section 830 of the Standards for the Interdepartmental Regulation of Children’s Residential Facilities (22VAC42-11 *et seq.*) allows each of these boards to, upon request of a provider, approve a ratio that allows a higher number of residents to be supervised by one staff if the requested staffing ratio will not adversely affect the care of the residents and if the residents’ needs will continue to be met on an individual as well as a group basis. The Department asserts that the requested staffing ratio will not adversely affect the care of the residents and the residents’ needs will continue to be met on an individual as well as a group basis and thus expects this regulatory action to be noncontroversial.

**Substance**

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the “Detail of changes” section.)*

This action will create a new section (6VAC35-140-46) in the Board of Juvenile Justice’s Standards for Juvenile Residential Facilities (6VAC35-140 *et seq.*). The proposed section adopts the prior regulatory requirements (which were required of these facilities before the December 2007 amendments to the Standards for Interdepartmental Regulation of Children’s Residential Facilities), will make current practice a regulatory requirement, and will result in continued uniform application in these facilities throughout the Commonwealth.

This new subsection will set the staffing pattern for nonsecure facilities regulated by the Board. The staffing ratio would be set at one staff for 10 residents during scheduled awake hours (except independent living programs where it is set at one to 15) and one staff for every 16 residents during scheduled sleep hours. Additionally, when the residents are sleeping, at least one staff member must be in each building and on each floor where residents sleep (except independent living programs).

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

*If there are no disadvantages to the public or the Commonwealth, please indicate.*

Section 830 of the Standards for Interdepartmental Regulation of Children’s Residential Facilities (22VAC42-11-10 *et seq.*) provides that facilities regulated by the Departments of Education, Social Services, and Mental Health, Mental Retardation, and Substance Abuse Services must maintain a staffing ratio of one staff person for each eight residents. Section 830 specifically excludes facilities regulated by

the Board of Juvenile Justice and provides the Board of Juvenile Justice shall determine the applicable supervision ratios. This exclusion applies to both secure and nonsecure facilities regulated by the Board.

6VAC35-140-545 sets the staffing pattern for secure facilities regulated by the Board of Juvenile Justice. No regulations or policies adopted by the Board of Juvenile Justice set the required staffing ratio for nonsecure facilities it regulates. Thus, the proposed regulation is essential to protect the health, safety, or welfare of both juveniles who reside in juvenile residential facilities and the staff who work there. Absent this regulation, an operator of a nonsecure residential facility regulated by the Board of Juvenile Justice may elect to set a higher staffing ratio that could potentially adversely affect the care of the residents and result in the residents' needs being unmet. This proposed regulatory action could close that gap.

Thus, the proposed provision is advantageous to the public because it provides additional protections for the health, safety, and welfare of the residents in juvenile residential facilities regulated by the Board of Juvenile Justice.

There are no known disadvantages to this regulation.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no applicable federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

There is no locality in the Commonwealth that is particularly affected by the proposed regulation or would have to bear a disproportionate material impact. The proposed section would be making current practice a regulatory requirement and will result in uniform application throughout the Commonwealth.

**Regulatory flexibility analysis**

*Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

The proposed section would be making current practice a regulatory requirement and will result in uniform application throughout the Commonwealth. It will have minimal impact on small businesses and would not be benefited by alternative regulatory methods as those would change practice and could have a negative impact on small businesses. Establishing a uniform staffing ratio is essential for the health and safety of the residents in such facilities.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source/fund detail, and (b) a delineation of one-time versus on-going expenditures.</b>	The cost to the state to implement and enforce the proposed regulation is negligible.
<b>Projected cost of the regulation on localities.</b>	The proposed section would be making current practice a regulatory requirement and should not result in any additional cost on localities.
<b>Description of the individuals, businesses, or other entities likely to be affected by the regulation.</b>	The provision directly affects operators of and residents in nonsecure juvenile residential facilities regulated by the Board of Juvenile Justice. The proposed section would be making current practice a regulatory requirement and should not have any actual affect.
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	The Board of Juvenile Justice regulates a total of 29 nonsecure juvenile residential facilities (24 community youth homes; three state-operated halfway houses; and two family-oriented group homes). Some of the community youth homes and family-oriented group home programs are small businesses.
<b>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</b>	The proposed section would be making current practice a regulatory requirement and should not have any actual affect. Thus, the projected cost to implement and enforce the proposed regulation is negligible.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

There are no appropriate alternatives to this regulatory action. 22VAC42-11-830 requires the Board of Juvenile Justice to determine the applicable supervision ratios for the juvenile residential facilities it

regulates. Under the current regulatory scheme, there is no established staffing ratio for nonsecure facilities regulated by the Board. Thus, adopting the proposed section will close that gap.

**Family impact**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

The regulation provides a vehicle for protecting the residents who are admitted to facilities regulated by the Board of Juvenile Justice and promotes appropriate staffing ratio to best ensure the welfare of the residents in such facilities across the Commonwealth. By adopting a required staffing ratio, the regulation will continue to bolster family relationships and have a positive impact on families during the period of time the juvenile resides in the applicable facilities.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulations, use this chart:

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
	6VAC35-140-46	None	The proposed section will require the following staffing pattern: - During the hours that residents are scheduled to be awake, there shall be at least one child care staff member awake, on duty, and responsible for supervision of every 10 residents, or portion thereof, on the premises or participating in off-campus, facility-sponsored activities except that independent living programs shall have at least one child care staff member awake, on duty, and responsible for supervision of every 15 children on the premises or participating in off-campus, facility-sponsored activities. - During the hours that residents are scheduled to sleep, there shall be no less than one child care staff member on duty and responsible for supervision of every 16 residents, or portion thereof, on the premises.

			<ul style="list-style-type: none"> <li>- There shall be at least one child care staff member on duty and responsible for the supervision of residents in each building where residents are sleeping. This requirement does not apply to approved independent living programs.</li> <li>- On each floor where children are sleeping, there shall be at least one child care staff member awake and on duty for every 30 children or portion thereof.</li> </ul>
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The proposed section adopts the prior regulatory requirement (which was required of these facilities before the December 2007 amendments to the Standards for Interdepartmental Regulation of Children’s Residential Facilities). It codifies current practice (as these facilities have continued to operate under the prior regulatory requirement) and will result in continued uniform application in these facilities throughout the Commonwealth. Also, the proposed new standard is the same standard currently governing secure facilities regulated by the Board of Juvenile Justice.